

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>JASON NATHANIEL GILMER,</b>	)	<b>Civil Action No. 7:14cv00111</b>
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b><u>ORDER</u></b>
	)	
<b>DR. SMITH, et al.,</b>	)	<b>By: Norman K. Moon</b>
<b>Defendants.</b>	)	<b>United States District Judge</b>

Jason Nathaniel Gilmer filed a verified complaint alleging, *inter alia*, that Dr. Smith was deliberately indifferent to Gilmer's broken femur, in violation of the Eighth Amendment of the United States Constitution, while Gilmer was incarcerated at the Keen Mountain Correctional Center. By a previous memorandum opinion and order, I denied Dr. Smith's motion for summary judgment because a jury trial was necessary to resolve disputes of material facts with respect to Gilmer's claim. Presently before me is Dr. Smith's motion for reconsideration, arguing that I did not resolve the question of qualified immunity and that Gilmer suffered no substantial harm from the broken femur.

The denial of summary judgment due to disputes of material facts precludes granting qualified immunity to Dr. Smith. *See, e.g., Johnson v. Jones*, 515 U.S. 304, 313-18 (1995); *Barkes v. First Corr. Med., Inc.*, 766 F.3d 307, 316 (3d Cir. 2014) ("[A] genuine dispute of material fact will preclude summary judgment on qualified immunity."). Furthermore, Gilmer's allegations in the verified complaint about severe pain and the inability to walk properly as a result of Dr. Smith's care, or alleged lack thereof, are sufficient to proceed to trial; it will be the jury's duty to resolve whether Gilmer's allegations cross the threshold to recover under the Eighth Amendment. To the extent Dr. Smith presents new evidence and argument after his motion for summary judgment was already resolved, Dr. Smith may present that evidence and

argument at trial. Accordingly, it is hereby **ORDERED** that Dr. Smith's motion for reconsideration is **DENIED**.

The Clerk shall send copies of this order to the parties.

ENTER: This 17<sup>th</sup> day of April, 2015.

  
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NORMAN K. MOON  
UNITED STATES DISTRICT JUDGE